

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFOR THE BOARD OF PATENT APPEALS AND INTERFERENCES

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Appellants(s): Vandersluis

REPLY BRIEF

April 7, 2008

This is in response to the Examiner's Answer dated March 25, 2008.

The appellant respectfully submits that the Examiner's Answer exhibits a number of clear errors.

35 USC § 101

Claim 1-12 according the Examiner's Answer are directed to a "software program per se", see Page 3 of Answer 3/25/08. A software program per se is a claim to the written code of the software program. The written code of a software program is only protectable under copyright law. The code of a software program is a written document that is not capable of taking any actions. Claims 1 clearly describes a dynamic data generation module. The dynamic data generation modules is a process that converts portions of data in a first hierarchical data scheme into a second hierarchical data scheme. See page 6, lines 5-12 of the specification. Clearly the claim is directed to a process performed by executing a software program and not to the written code. Claims 1-12 are clearly directed to statutory material.

35 USC § 102(e)

The Examiner's Answer consistently shows a failure to be consistent in making analogies between the elements of the claims and Fernandez. For example, the Examiner's Answer alternatively states that the dynamic data generation module is the XML generator 106 of Fernandez (page 5, claim 1) and is also the translator 102 of Fernandez (page 6, claim 10). Note claim 1 and claim 10 are part of the same claim set. In order for the Examiner's analogies to be valid they have to be consistent. This problem runs throughout the Examiner's Answer.

In claim 1 the Examiner's Answer attempts to make an analogy between the prior art (Fernandez) and the present patent application. However, the Examiner is not consistent in her analogy. Claim 1 has three general elements: a template, a dynamic data generation module and a data source. The Examiner states that the template of Fernandez is the "XML construction part, e.g., XML template". The dynamic data generation module according to the Examiner is the XML generator 106 of Fernandez, and the data source is the RDBMS 110. Note that "XML template" of Fernandez is generated by the translator 104, "which partitions the executable query into a data-extraction part, e.g., one or more SQL queries, and into an XML-construction part, e.g., XML template." (Col. 5, lines 26-30. Claim 1 recites that the dynamic data generation module is contained in the template. However, Fernandez clearly shows that the XML generator 106 (analogy to dynamic data generation module) is not in the translator 104 (XML template). Note that merging the results from the data-extraction part into the XML template is not the same thing as having the data-extraction part in the template. (See pages 14-15 of Examiner's Answer"). Thus, Fernandez does not inherently or expressly disclose every element and the elements arrangement as in the claim. Claim 1 is clearly allowable.

In claim 5, the Examiner's Answer, page 15, states that a template is a document of file with a preset format. Note that in Fernandez the XML template is generated when an "executable query" (e.g., RXL query) is passed to the

translator 104, "which partitions the executable query into a data-extraction part, e.g., one or more SQL queries, and an XML-construction part, e.g., an XML template." Col. 5, lines 26-30, Fernandez. Thus the XML template is generated by the RXL query. This is not a "file with a preset format", since it is generated by the translator 104 in response to the RXL query. If the XML template of Fernandez was in a preset format, there would be no reason to generate it in response to the RXL query. Thus, Fernandez does not inherently or expressly disclose every element and the elements arrangement as in the claim. Claim 5 is clearly allowable.

In claim 10, the Examiner Answer shows an inconsistent analogy. With respect to claim 1, the Examiner states that the dynamic data generation module is the XML generator 106 of Fernandez. See Examiner's Answer page 5. Now with respect to claim 10 the Examiner states that the dynamic data generation module is the composer module 102 of Fernandez. See Examiner's Answer page 6.

Claim 10 recites that the dynamic data generation module contains a query. However, the XML generator 106 of Fernandez does not contain a query. There are four queries discussed by Fernandez: the user query, the view query, the executable query and the SQL query. As clearly shown in FIG. 1 of Fernandez none of the queries are contained in the XML generator. The Examiner cannot change his analogy by stating for claim 10, the composer module 102 of Fernandez is the dynamic data generation module. See Examiner's Answer page 6. If the Examiner is going to make an analogy it has to be consistent across the claims in a claim set. Note that the Examiner starts her argument with "the limitations of this claim have been noted in the rejection of claim 1." Thus, Fernandez does not inherently or expressly disclose every element and the elements arrangement as in the claim. Claim 10 is clearly allowable.

In claim 11, the Examiner's Answer page 7 points to column 2, lines 42-51 of Fernandez as showing the limitations of claim 11. The limitations of claim 11 are "the dynamic data generation module includes a data mapping between the first hierarchical data scheme and the second hierarchical data scheme." According to the Examiner the dynamic data generation module is the XML generator 106 of Fernandez. See Examiner's Answer page 5. The section pointed to by the Examiner with respect to claim 11 states "According to one aspect of the present invention a general framework is provided for mapping relational databases to XML views, to be used in data exchange." This section of Fernandez says nothing about whether this mapping is in the XML generator 106. In addition, this section of Fernandez does not state that there is a "data mapping", just a "general mapping." What is meant by a "general mapping" – conversion between a relational database and XML views? This is not what is meant by a "data mapping." The conversion between the two formats is the general purpose of Fernandez. In claim 11, the phrase "data mapping" is not a statement of the general purpose but denotes the correlation of categories of data in the first data scheme to categories of data in the second data scheme (Specification, page 12-14). Figure 14 of the specification shows a screen for creating a data mapping. Thus, Fernandez does not inherently or expressly disclose every element and the elements arrangement as in the claim. Claim 11 is clearly allowable.

Similar problems in the analogies of the Examiner's Answer and previous Office Actions from the Patent Office are found in the rest of the claims. The applicant will spare the Board from reciting ever instance where the Office Actions and Examiner's Answer has failed to be consistent in its arguments. The applicant is confident that the Board can spot these issues.

